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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,884

10/05/2006

Andrew Macleod

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01/06/2010

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EXAMINER

TYLER, STEPHANIE E

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

01/06/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US_cipkop@gsk.com

Office Action Summary	Application No. 10/550,884	Applicant(s) MACLEOD ET AL.	
	Examiner STEPHANIE E. TYLER	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/28/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, in line 9 the "flow conduit" appears to be a double inclusion of the "flow conduit" in line 12.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7,13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Morane et al. (4,860,933).

The Morane et al. reference discloses a container (101) containing the foamable composition under pressure, the container having a valve stem (107) with an exit opening for the composition at its end remote from the container, and which can be moved by application of actuating force to the valve stem (107) to thereby release the composition, an actuator (8) mounted on said container (101) and by which a user can apply actuating force to the dispensing valve, the actuator comprising, a flow conduit

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(114) defining an upstream to downstream flow path for the foamable composition, having a downstream dispensing opening (124) and mated at an upstream end with the valve stem (107), the flow conduit being wholly or partly displaceable upon the application of actuating force to the actuator to thereby bear upon the valve stem to actuate the valve stem, means (113) to communicate actuating force to the flow conduit, a closure (127,138) adjacent to the dispensing opening, wherein in the absence of actuating force the flow conduit (114) is biased into a closed relationship with the closure (127,138) to obstruct flow of composition through the dispensing opening (124), on the application of actuating force to the flow conduit (114) the flow conduit is wholly or partly displaced to actuate the valve stem (107) and the flow conduit is displaced out of its closed relationship with the closure (127,138) to allow flow of composition through the dispensing opening (124).

Re: Claim 18, a method of dispensing a foamable composition consisting of a dispenser applying actuating force thereto to thereby bear upon the valve stem (107) and open the valve stem (107) to thereby cause the foamable composition to be dispensed from the dispensing opening (124).

5. Claims 1-7,13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Meshberg (3,361,301).

The Meshberg reference discloses a container (12) containing the foamable composition under pressure, the container having a valve stem (14) with an exit opening for the composition at its end remote from the container, and which can be moved by

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application of actuating force to the valve stem (14) to thereby release the composition, an actuator (10,16) mounted on said container (12) and by which a user can apply actuating force to the dispensing valve, the actuator comprising, a flow conduit (25) defining an upstream to downstream flow path for the foamable composition, having a downstream dispensing opening (24) and mated at an upstream end with the valve stem (14), the flow conduit being wholly or partly displaceable upon the application of actuating force to the actuator to thereby bear upon the valve stem to actuate the valve stem, means (30) to communicate actuating force to the flow conduit, a closure (29) adjacent to the dispensing opening, wherein in the absence of actuating force the flow conduit (25) is biased into a closed relationship with the closure (29) to obstruct flow of composition through the dispensing opening (24), on the application of actuating force to the flow conduit (25) the flow conduit is wholly or partly displaced to actuate the valve stem (14) and the flow conduit is displaced out of its closed relationship with the closure (29) to allow flow of composition through the dispensing opening (24).

Re: Claim 18, a method of dispensing a foamable composition consisting of a dispenser applying actuating force thereto to thereby bear upon the valve stem (14) and open the valve stem (14) to thereby cause the foamable composition to be dispensed from the dispensing opening (24).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Goncalves (5,971,226), Katsuda et al. (6,241,131), Tice (3,383,879), Frey (DE 3203870), Nye (5,083,681), Ostrowsky et al. (3,726,444). Haas (3,318,492) are other various types of actuator caps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. TYLER whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. T./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754